

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

RONALD L. COSNER,

Plaintiff,

v.

Civil Action No. 2:18-cv-01499

DR. THISTLETHWAITE, JOSHUA
SHREWSBERY, SANDRA MAY, DR. LYE,
U.M. BESS, PSIMED, INC., WEXFORD
HEALTH SOURCES, INC., and
MOUNT OLIVE CORRECTIONAL COMPLEX,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending are (1) defendants Josh Shrewsbery, Sandra May, Dr. Lye, and Wexford Health Sources, Inc.'s motion to dismiss, filed June 5, 2019; (2) and defendants Dr. Thistlethwaite and PSIMED, Inc.'s motion to join in the other defendants' motion to dismiss, filed October 18, 2019.

This matter having been referred to United States Magistrate Judge Dwane L. Tinsley pursuant to 28 U.S.C. § 636(b)(1)(B), he filed his Proposed Findings and Recommendations ("PF&Rs") on November 7, 2019 and November 12, 2019. Magistrate Judge Tinsley recommends that the court (1) deny defendants' motion to dismiss for insufficient service of process, pursuant to Rule 12(b)(5) of the Federal Rules of Civil

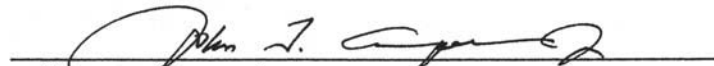
Procedure, it being further noted by this court that the movants have since been served, (2) deny defendants Dr. Thistlethwaite and PSIMED, Inc.'s motion to join therein, it being further noted by this court that the movants have since been served, and (3) dismiss Mount Olive Correctional Complex as a defendant inasmuch as it is not a person suable under 42 U.S.C. § 1983 and is further immune from suit in federal court under the Eleventh Amendment.

No objections having been filed to either PF&R, the parties have waived de novo review by this court. Accordingly, it is ORDERED as follows:

1. That both PF&Rs be, and they hereby are, adopted and incorporated in full herein.
2. That defendants Josh Shrewsbury, Sandra May, Dr. Lye, and Wexford Health Sources, Inc.'s motion to dismiss be, and it hereby is, denied without prejudice.
3. That defendants Dr. Thistlethwaite and PSIMED, Inc.'s motion to join therein be, and it hereby is, denied without prejudice.
4. That Mount Olive Correctional Complex be, and it hereby is, dismissed as a defendant.

The matter continues to be referred to Magistrate Judge Tinsley for further proceedings. The Clerk is directed to forward copies of this memorandum opinion and order to plaintiff, all counsel of record, and the United States Magistrate Judge.

ENTER: December 24, 2019


John T. Copenhaver, Jr.
Senior United States District Judge